

1234 NO. 3380 1234

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

EUGENE SOL LOUIE,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of the Record

*Upon Writ of Error from the United States District
Court for the District of Idaho,
Northern Division.*

FILED

AUG 15 1919

F. D. MONGKTON

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

R. E. McFARLAND,

W. B. McFARLAND,

Coeur d'Alene, Idaho.

Attorneys for Plaintiff in Error.

J. L. McCLEAR,

U. S. District Attorney.


J. R. SMEAD,

Assistant District Attorney.

Boise, Idaho, Attorneys for Defendant in Error.

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*In the District Court of the United States Within and
for the District of Idaho, Northern
Division.*

MAY TERM, 1919.

UNITED STATES OF AMERICA,

vs.

EUGENE SOL LOUIE,

Defendant.

No. 1534.

INDICTMENT.

Charge Murder. Violation Section 273, Penal Code.

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the District of Idaho, Northern Division, in the name and by the authority of the United States of America, upon their oaths do find and present:

That heretofore, to-wit: On or about the 24th day of May, A. D. 1919, in the County of Benewah in the Northern Division of the District of Idaho, and in and upon Indian country, to-wit, within the limits of a certain Indian Reservation, to-wit, the Coeur d'Alene Indian Reservation in said Division and District, and

in the State of Idaho, Eugene Sol Louie, who was then and there a Coeur d'Alene Indian theretofore declared competent by the duly qualified authorities of the Department of Indian Affairs, and who then and there was a member of the Coeur d'Alene tribe of Indians by reason of the fact that he then and there had in common with all other members of said tribe an interest in certain tribal funds thereafter to be disbursed to the members of said tribe, including the said Eugene Sol Louie, by the United States of America, then and there unlawfully, wilfully, feloniously and of his deliberately premeditated malice aforethought made an assault upon one Adaline Bohn Sol Louie, a human being, with a knife, hammer and other deadly weapons to the Grand Jurors unknown, and did then and there unlawfully, wilfully and feloniously and of his deliberately premeditated malice aforethought strike, cut, bruise, beat and maim, the said Adaline Bohn Sol Louie, inflicting on the said Adeline Bohn Sol Louie in, about and upon her head, mortal wounds, of which the said Adeline Bohn Sol Louie then and there died, she, the said Adeline Bohn Sol Louie, being then and there a member of the Coeur d'Alene tribe of Indians and a ward of the United States living in and upon the aforesaid Coeur d'Alene Indian Reservation, and in the charge of the Superintendent of said Reservation;

And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the said

Eugene Sol Louie in the manner and form aforesaid did unlawfully, wilfully and feloniously, and of his deliberately premeditated malice aforesaid, kill and murder the said Adeline Bohn Sol Louie, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. R. SMEAD,

*Assistant United States Attorney for the
District of Idaho.*

C. A. ANDERSON,

*Foreman of the United States
Grand Jury.*

WITNESSES EXAMINED BEFORE THE
GRAND JURY IN THE ABOVE CASE:

Pascal George, Mrs. Joe Seltice, Joe Seltice, Prentice Wolf, Dr. Eugene W. Hill.

(Endorsed)

No. 1534.

*In the District Court of the United States, District
of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

vs.

EUGENE SOL LOUIE,

Defendant.

Indictment, Murder.

A True Bill.

C. A. ANDERSON,

Foreman.

Presented by the Foreman in open court and filed in the presence of the Grand Jury this 29th day of May, 1919.

W. D. McREYNOLDS,
Clerk.

At the May, 1919, term of the District Court of the United States for the District of Idaho, Northern Division, held at Coeur d'Alene, among others, the following proceedings were had on the days shown herein.

Present:—

Hon. Frank S. Dietrich, Judge.
Thursday, May 29th, 1919.

(Title of Cause.)

ARRAIGNMENT AND PLEA

Comes now the District Attorney with the defendant and Messrs. McFarland & McFarland, his counsel, into court, the defendant to be arraigned upon the indictment charging him with the crime of murder. The indictment was read to the defendant by the Clerk, who furnished him with a true copy thereof, upon order of the Court. The Court asked the defendant if the name by which he was indicted was his true name, and the defendant replied in the affirmative.

The defendant waived time in which to plead, whereupon, the Court asked the defendant if he

pleads guilty or not guilty of the offense charged in the indictment, and the defendant pleaded not guilty. The Court set the cause for trial at ten o'clock A. M. Wednesday, June 4th, 1919, and remanded him to the custody of the Marshal, to appear at that time.

Thursday, June 5th, 1919.

(Title of Cause.)

MOTION FOR DISMISSAL.

This cause came regularly on for trial before the Court and a jury, the defendant being present with his counsel, Messrs. McFarland & McFarland and R. B. Norris, Esq., the United States being represented by J. L. McClear, District Attorney and J. R. Smead, Esq., his assistant.

* * * * *

The indictment was read to the jury by the District Attorney, who informed them of the defendant's plea of not guilty, heretofore entered thereto. Morton D. Colgrove was sworn and examined as a witness on the part of the United States. Counsel for the defendant here stated that he desired to make a motion without the presence of the jury; whereupon, the Court admonished the jury, then excused them, and they retired from the room. Counsel for the defendant then moved the Court to dismiss the cause, for want of jurisdiction. The said motion was argued by counsel, and taken under advisement by the Court.

* * * * *

Whereupon, the Court after admonishing the jury, excused them until 9:30 o'clock A. M. June 6th, 1919, continuing further trial herein until that time.

Friday, June 6th, 1919.

(Title of Cause.)

ORDER DENYING MOTION TO DISMISS.

The trial of this cause was resumed before the Court and jury, counsel for the United States, the defendant and his counsel being present, it was agreed that the jurors were all present.

* * * * *

The Court at this time announced his decision upon the defendant's motion to dismiss, denying the same; to which order the defendant excepted.

* * * * *

Whereupon, the Court, after admonishing the jury, excused them until 9:30 o'clock A. M. June 7th, 1919, continuing further trial herein until that time.

(Title of Court and Cause.)

VERDICT.

We, the jury in the above entitled cause, find the defendant Eugene Sol Louie guilty of murder (as charged) in the second degree.

EDWIN E. KYLE,

Foreman.

Endorsed: Filed June 7, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

MOTION IN ARREST OF JUDGMENT.

And now after verdict against the said defendant and before sentence, comes the said defendant in his own proper person, and by McFarland & McFarland, his attorneys, and moves the Court here to arrest judgment herein and not pronounce the same for the following reasons, to-wit:

1. Because this Honorable Court has not jurisdiction of the person of said defendant, because the indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated and adjudged and declared competent by the duly qualified authorities of the Department of Indian Affairs of the government of the United States of America to conduct and transact his own affairs and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Adeline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$), and the East One-half ($E\frac{1}{2}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto.

2. That this Honorable Court has not jurisdiction of the crime charged against said defendant or the subject matter thereof, because the indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated and adjudged and declared competent by the duly qualified authorities of the Department of Indian Affairs of the government of the United States of America, to conduct and transact his own affairs and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Adeline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$), and the East One-half ($E\frac{1}{2}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto, because of which said errors in the record herein, no lawful judgment can be rendered by the Court upon the record in this cause.

McFARLAND & McFARLAND,

Attorneys for Defendant.

P. O. Address: Coeur d'Alene, Idaho.

Service of the above and foregoing motion in arrest of judgment by receipt of a true copy thereof

at Coeur d'Alene, Idaho, this 12th day of June, 1919, is hereby admitted.

J. L. McCLEAR,
U. S. District Attorney.

Endorsed: Filed June 13, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

JUDGMENT.

Now, on this 13th day of June, 1919, the United States District Attorney, with the defendant and his counsel, Messrs. McFarland & McFarland, came into Court; the defendant was duly informed by the Court of the nature of the indictment found against him for the crime of murder, committed on the 24th day of May, A. D. 1919, of his arraignment and plea of "Not guilty as charged in said indictment," of his trial and the verdict of the jury on the 29th day of May, A. D. 1919, "Guilty as charged in the indictment." The defendant was then asked by the Court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted of the crime of murder,

It is hereby considered and adjudged that the said defendant, Eugene Sol Louie, be imprisoned in the United States Penitentiary, at McNeil Island, Washington, for the term of Twelve (12) Years and

it is further ordered and adjudged that said defendant be and is hereby remanded to the custody of the United States Marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

(Title of Court and Cause.)

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on the 5th day of June, A. D. 1919, being one of the days of the May term of said Court, this cause came on to be heard before His Honor, Judge Frank S. Dietrich, one of the judges of said court, and a jury therein duly sworn to try said cause, the defendant having theretofore been duly and regularly arraigned in person and pleaded not guilty to said indictment, J. L. McClear, United States Attorney, and J. R. Smead, Assistant United States Attorney, appearing for plaintiff, and R. E. McFarland and R. B. Norris, appearing as attorneys for defendant, and the United States to maintain the issues on its part, called as witnesses divers persons, who being duly sworn testified in said cause.

BE IT FURTHER REMEMBERED, that upon the trial of said cause, the United States called as as a witness, one M. D. Colgrove, who being duly sworn testified as follows:

My name is M. D. Colgrove. I live at the Agency on the Coeur d'Alene Indian Reservation. Sorrento, Idaho, is our post office. It is a mile and a half

from the Agency. I am superintendent of that reservation, and have been superintendent nine years the 5th of November. I know the defendant, Eugene Sol Louie. He is an Indian of the Coeur d'Alene tribe.

BE IT FURTHER REMEMBERED, that the following interrogatories were propounded to said witness, to which he made the following answers:

Q. What is his present status with relation to that tribe, as to whether or not he is still a ward of the Government, that is, whether he has been declared competent to manage his own affairs, or whether he is a ward of the Government yet?

A. He has been given a patent in fee, which is supposed to be obtained through being competent.

Q. Referring to that patent in fee that you mentioned, you mean he has been given a patent in fee to certain land that was on the reservation there?

A. Yes, sir.

Q. On the Coeur d'Alene Indian Reservation?

A. Yes, sir.

Q. Prior to obtaining that patent in fee, was he interested in that land, and if so, in what way?

A. He had a trust patent for it prior to that.

Q. By that you mean the United States held that land in trust for him?

A. Yes, sir.

Q. Now has the defendant at the present time any interest in any funds later to be disbursed to the Coeur d'Alene tribe or to the individual mem-

bers of that tribe, rather, by the United States through your office?

A. Yes.

Q. He still has an interest in such funds?

A. Yes, sir.

Q. Were you acquainted with the woman mentioned in this indictment as having been killed, Adeline Sol Louie, Adeline Bohn Sol Louie?

A. Yes, sir.

Q. What was her status prior to her death? Was she a ward of the Government or not?

A. Yes, sir, she was a ward.

Q. By that you mean she had never been declared competent and had never received any patent in fee for any allotment?

A. Yes, sir, that is what I mean.

Q. And she remained in that status up to the time of her death?

A. Yes, sir.

BE IT FURTHER REMEMBERED, that said witness continued to testify upon examination by the United States Attorney, as follows:

Eugene Sol Louie has no lineal descendants, or any children. He has a father and mother living on the reservation. They are Coeur d'Alene Indians and wards of the Government in my charge. The land to which Eugene Sol Louie received the patent lies within the Coeur d'Alene reservation. That is, the limits prior to the time the last cession was made. These facts existed on the first of May, 1919. He had gotten his patent before that time.

BE IT FURTHER REMEMBERED, that said witness continued to testify upon cross-examination by R. E. McFarland, as follows:

I know the description of the land patented by the Government to the defendant. It is the West Half of the Southeast quarter and the East Half of the Southwest quarter of Section 11, Township 44 North of Range 5 West. All of the land that was formerly the Coeur d'Alene Indian Reservation and not ceded was not allotted to the Indians. There are no Indians on that reservation to whom allotments have not been made by the Government, except those born since May 2, 1910. There are no tribal lands on that reservation at all. The status of the land is all of the land that had not been allotted was opened to settlement on May 2, 1910, and of that land that was open to settlement, there is about 18,000 acres that has not been settled upon. That is yet open. It all lies within the reservation as we get the maps from the Indian Department. The reservation is shown, its shape. Part of it is in blue for the allotments, and the rest of it in white, showing that it was land that was opened to settlement. I know of the death of Adeline Sol Louie. She was residing on the land that was patented to the defendant at the time of her death.

BE IT FURTHER REMEMBERED, that said witness continued to testify upon re-direct examination by Mr. Smead, as follows:

This 18,000 acres that has not been settled on, was included in the cession by the Coeur d'Alene

tribe back to the United States. They are interested in this way. They get the money it would sell for. The land itself is owned by the Government and platted and thrown open to entry by the white people. The Indian lands now consist of the individual allotments in severalty to the members of the tribe and certain townsites on the reservation.

BE IT FURTHER REMEMBERED, that the witness continued to testify upon examination by the court, as follows:

The townsites are owned by the Government and they are sold by the general land office and the money goes into a fund that is to be distributed pro rata among the Indians. The proceeds arising from the sale of this 18,000 acres is turned over to the Indians, and divided among them per capita. The Government holds the title to that land in fee simple now. By this cession of which I spoke, the Indians relinquished their rights to it and when the patents come to the purchasers, they are made direct to the purchaser from the United States. The price of the land is fixed by an appraising commission. Every forty acres is appraised at a certain price. There is a proviso, however, that if the land was not sold by a certain period, the land might be sold at any valuation it might bring. This 18,000 acres consisted of land on top of the mountain peaks, which no one considered desirable and it still remains unsold.

BE IT FURTHER REMEMBERED, that to the following questions propounded by the Court, the witness made the following answers:

Q. What supervision do you exercise over the defendant here, he having a patent to his land? Do you exercise any control over him at all?

A. No, sir, the only thing I have to do is with his part of the money that is in the United States Treasury that is yet unpaid. We have had one distribution and he has received his share of that.

Q. That is a part of this common fund you mean that arises from the sale of this land?

A. Yes, sir.

Q. As to this particular allotment, he lives on that and does as he pleases?

A. Yes, sir, he was living on that and was making arrangements to farm a portion of it.

Q. And if he wanted to rent it, he could rent it?

A. Yes, sir.

Q. Or sell it?

A. Yes, sir. He could sell it.

BE IT FURTHER REMEMBERED, that said witness was dismissed from the witness stand, and thereupon United States Assistant Attorney, Mr. Smead, and R. E. McFarland and R. B. Norris, the attorneys for the defendant, stipulated in open court as follows:

That the injuries to Adeline Bohn Sol Louie and mentioned in the indictment, were sustained by her upon the land mentioned in the testimony of said witness Colgrove, viz., the West Half of the Southwest quarter and East Half of the Southwest quarter of Section 11, Township 44, North of Range West, which prior thereto had been patented in fee

to the defendant, and that after receiving such injuries, she was removed from said lands to the allotment of one Nancy Lawrence Mockett, where she died.

BE IT FURTHER REMEMBERED, that thereupon the defendant, by his counsel, made the following objection and motion:

Upon the testimony of the witness Colgrove, and the stipulation made and entered into by the respective counsel in open court, and the further statement of the District Attorney that there would be no further or additional evidence offered with reference to the status of the defendant or the lands allotted to him and testified to be the witness Colgrove, the defendant objects to any further testimony in this case, and moves that the case be dismissed, for the reason that this court has no jurisdiction of the case, for the reason that the testimony clearly shows that the defendant is not an Indian under the control or superintendency of an Indian Agent or Superintendent; that he has been declared and adjudged by the Government and the proper authorities of the Government as competent to manage his own affairs, and that a patent to lands lying upon the so-called Coeur d'Alene Indian Reservation has been allotted to him, and that the injuries received by the deceased Adeline Bohn Sol Louie were received by her upon these lands so patented to the defendant, and that they are not within or properly speaking a part of the Coeur d'Alene Indian Reservation.

BE IT FURTHER REMEMBERED, that the court reserved his ruling upon said objection and motion, and took the same under advisement, pending the hearing of further testimony, and thereupon E. W. Hill was called by the United States as a witness, and after being duly sworn, testified as follows:

That he is in the employ of the Government at Desmet, Idaho, as medical officer for the Indian Service, Coeur d'Alene Indians, and that he had been in such service for about two and a half years; that he had been in the Government service for twelve years; that he was at Tensed, Idaho, on the 5th of May; that he received a telephone call from the Mission requesting him to go there to see a young woman that was seriously injured, and that he arrived there about a quarter of eight on May 5th. He found a girl practically unrecognizable from wounds; he recognized her as Adeline Sol Louie, the wife of Gene Sol Louie, the defendant. She was at the house of Nancy Lawrence, in a small room. That he is the official physician for the United States Government in the Indian Service, and was appointed by the Indian Bureau. He is paid a salary and for that compensation he serves the Indians without charge. It would be his duty to serve any Indian on the reservation without charge. The territory covering his employment is officially known and referred to as the Coeur d'Alene Indian Reservation.

BE IT FURTHER REMEMBERED, that said witness was excused and M. D. Colgrove was by the United States recalled and testified further upon examination by J. L. McClear, United States Attorney, as follows:

By a treaty stipulation with the Coeur d'Alenes, the United States agrees to provide a physician and blacksmith and a carpenter, and medicines for the Coeur d'Alenes and for that purpose, and embodied in the Indian bill, there is appropriated annually the sum of \$3000.00. The duties of the physician under that is, to take care of all of the Indians. The physician cares for all the Indians, and the blacksmith does the work, and the carpenter does the work of the Indians on the reservation. However, by agreement, the carpenter has been changed to lease clerk, so that the money that formerly paid the carpenter's salary, now pays the lease clerk. This money is paid from an appropriation made by Congress known as the Coeur d'Alene Support. That takes care of all of the Indians in that way within the limits of the old reservation; all of the Indians on our census roll. The census roll includes both the allotted Indians and the Indians that have received patent, and all. That roll contains the names of all emancipated Indians.

BE IT FURTHER REMEMBERED, that said witness continued to testify upon examination by the Court, as follows:

The place where the deceased died is not on the defendant's allotment. It is in the townsite. Nancy Moctelme bought three lots and houses in the townsite of Tensed, and the girl had been removed there before I got out. The defendant's wife, who died, had not been emancipated in any formal way. Her land is still under trust. Her allotment is still under trust. This land in the townsite,—these lots, are not held in trust. They have been built on and sold. They have town lot sales, and these lots have been sold and patented and patents issued to purchasers, and she purchased. I don't know whether it was the first exchange, but she purchased from someone who purchased from the Government. She bought this property after the property had been sold and houses erected thereon. She bought the houses and lots.

BE IT FURTHER REMEMBERED, that said witness was excused from the witness stand, and other witnesses were called by the United States, sworn and testified, after which the Government rested.

BE IT FURTHER REMEMBERED, that no other or further testimony or proof was introduced, had, taken or given upon the trial of said cause, with reference to the status of the defendant, Eugene Sol Louie, or with reference to the status of the deceased, Adeline Bohn Sol Louie, at the time of the commission of the alleged crime, or at any other time, and that no other or further testimony

was produced, had, taken or given upon the trial of said cause with reference to the place where the said Adeline Bohn Sol Louie received the injuries from which she died.

BE IT FURTHER REMEMBERED, that at the conclusion of the Government's evidence and after the Government rested, the defendant, by his counsel, renewed the objection and motion above stated, and the Court overruled and denied said objection and motion, to which ruling the defendant, by his counsel, then and there duly excepted and an exception was duly allowed by the Court, and the defendant assigns such ruling as error.

And thereupon the defendant to maintain the issues on his part, called witnesses, who were duly sworn and testified. Here the defendant rested and the Government rested.

And thereupon the Court charged the jury, and said cause was argued to the jury by respective counsel.

And thereupon the jury rendered a verdict of guilty of murder in the second degree against said defendant.

BE IT FURTHER REMEMBERED, that upon the trial of said cause, the evidence upon behalf of the United States and the defendant both, clearly showed that at the time of the commission of the crime charged in the indictment herein, and of which defendant was convicted as aforesaid, and for some time prior thereto, the defendant had been

declared competent by the duly qualified authorities of the Department of Indian Affairs, to transact his own business and affairs, and that a patent had been issued to him by the United States for the West Half of the Southeast quarter, and the East Half of the Southwest quarter of Section Eleven, Township Forty-four North of Range Five West, in fee, and that the deceased, Adeline Bohn Sol Louie, was a Coeur d'Alene Indian, a ward of the Government, and was residing upon said lands with defendant and that she received the injuries from which she died, on said lands, and that after sustaining said injuries and before her death, she was removed to the home of Nancy Lawrence Moctelme, on patented lots in the townsite of Tensed, Idaho, where she died

BE IT FURTHER REMEMBERED, that after the rendition of the verdict of the jury aforesaid, and upon the defendant's being arraigned in open court for judgment and sentence, the defendant by his counsel, moved the Court to arrest judgment upon said verdict as follows:

And now after verdict against the said defendant and before sentence, comes the said defendant in his own proper person, and by McFarland & McFarland, his attorneys, and moves the Court here to arrest judgment herein and not pronounce the same for the following reasons, to-wit:

1. Because this Honorable Court has not jurisdiction of the person of said defendant, because the

indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated and adjudged and declared competent by the duly qualified authorities of the Department of Indian affairs of the government of the United States of America to conduct and transact his own affairs and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Adeline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) and the East One-half ($E\frac{1}{2}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto.

2. That this Honorable Court has not jurisdiction of the crime charged against said defendant or the subject matter thereof, because the indictment shows upon the face thereof that prior to the commission of the crime charged, the defendant was not a ward of the government, had been emancipated and adjudged and declared competent by the duly qualified authorities of the Department of Indian Affairs of the government of the United States of America, to conduct and transact his own affairs

and business and protect himself and property, and because the evidence clearly shows that the assault committed and the injuries inflicted upon the said Adeline Bohn Sol Louie, the deceased, and of which she died, were committed and inflicted upon her at and upon the West One-half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$), and the East One-half ($E\frac{1}{2}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Eleven (11), Township Forty-four (44) North of Range Five (5) West, and that at said time said lands and the whole thereof had been patented by the government of the United States to the said defendant, and the said defendant then and there held title in fee thereto, because of which said errors in the record herein, no lawful judgment can be rendered by the court upon the record in this cause. Which said motion was denied by the court, to which ruling of the court the defendant then and there duly excepted and assigns said ruling as error.

And thereupon the court rendered its judgment and sentence upon said verdict, which judgment and sentence is as follows:

That the defendant, Eugene Sol Louie, be imprisoned in the United States Prison at McNeil's Island, State of Washington, at hard labor for the period of twelve years.

And for as much as the evidence and proceedings and matters of exceptions above set forth, do not fully appear of record, the defendant, by his attorneys, tenders this bill of exceptions and prays that

the same be signed and sealed by the court here pursuant to the statute in such case made and provided;

Which is done accordingly this 9th day of July, A. D. 1919.

FRANK S. DIETRICH,
Judge.

STIPULATION FOR SETTLEMENT OF BILL
OF EXCEPTIONS.

It is hereby agreed and stipulated by and between the plaintiff and defendant in the above entitled action, that the above and foregoing bill of exceptions is a true and correct bill of exceptions in said case, and may be settled, signed and sealed by the court as such without any other or further notice to either of the parties hereto.

Dated this 8th day of July, A. D. 1919.

J. L. McCLEAR,
United States District Attorney.

R. E. McFARLAND,
Attorney for Defendant.

Service of the foregoing Bill of Exceptions, by receipt of a true copy thereof at Boise, Ada County, State of Idaho, this 5th day of July, A. D. 1919, is hereby admitted.

J. L. McCLEAR,
*United States District Attorney for the
District of Idaho.*

Endorsed: Filed July 9, 1919.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

PETITION FOR WRIT OF ERROR.

And now comes Eugene Sol Louie, defendant herein, by McFarland & McFarland, and R. E. McFarland, his attorneys, and says that on the 13th day of June, A. D., 1919, this court entered judgment herein against this defendant on a verdict of the jury returned on the 7th day of June, A. D. 1919, upon an indictment charging the defendant with murder in violation of Section 273 of the Penal Code, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more fully appear from the assignment of errors, which is filed with this petition.

WHEREFORE this defendant prays that a writ of error may issue in this behalf out of the United State Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Circuit Court of Appeals aforesaid.

EUGENE SOL LOUIE.

By MCFARLAND & MCFARLAND,
and R. E. MCFARLAND,
Attorneys for Defendant.

Service of the foregoing petition for Writ of Error by receipt of a true copy thereof at Boise, Idaho,

this 16th day of July, 1919, is hereby admitted.

J. L. McCLEAR,
*U. S. District Attorney,
Attorney for Plaintiff.*

Endorsed: Filed July 16, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

Engene Sol Louie, defendant in the above entitled cause, by McFarland & McFarland and R. E. McFarland, his attorneys, in connection with his petition for a writ of error, makes the following assignments of error, which he alleges occurred upon the trial of said cause:

1. The indictment herein is insufficient and does not state facts sufficient to constitute or charge any crime against the laws of the United States of America, nor any offense under Section 273 of the Penal Code of the United States.

2. The indictment herein shows upon the face thereof that this court has not jurisdiction of the person of the defendant.

3. The indictment herein shows upon the face thereof, that this court has not jurisdiction of the subject of this cause or action.

4. The trial court erred during the progress of the trial, in over-ruling defendant's objection to the admission of any further testimony, after the conclusion of the testimony of Dr. E. W. Hill, for the

reason that the evidence disclosed the fact that the defendant was an emancipated Indian, had received his patent in fee, and that the injuries sustained by the deceased, and from which she died, was inflicted upon her upon the lands patented to the defendant by the United States, and this court has not jurisdiction of said cause.

5. The trial court erred in over-ruling and denying defendant's motion to dismiss this cause at the conclusion of the testimony of said witness Hill, for the reason that the evidence disclosed the fact that the defendant was an emancipated Indian, had received his patent in fee, and that the injuries sustained by the deceased, and from which she died, was inflicted upon her upon the lands patented to the defendant by the United States, and this court has not jurisdiction of said cause.

6. The trial court erred at the close of the testimony for the United States in over-ruling and denying defendant's motion to dismiss said cause, for the reason that the evidence clearly shows that at the time of the commission of the crime charged, the defendant had been declared by the Indian Department of the United States, competent to manage his own business and affairs, had been emancipated and there had issued to him a patent for the lands included in an allotment previously made by the United States to him, and that the crime charged was committed upon said lands, and not upon an Indian Reservation, and that the injuries

or wounds received by the deceased, and of which she died, was received upon said lands and premises, and not upon an Indian Reservation, and that the deceased died upon patented land, and not upon an Indian Reservation, and the court did not have jurisdiction over the person of the defendant, or the subjects of said action.

7. The trial court erred in denying the motion in arrest of judgment on behalf of defendant, in this, that the indictment shows upon the face thereof that this court has not jurisdiction of the defendant, for the reason that he has been declared or adjudicated competent to transact his own business and affairs.

That the testimony shows that the defendant, prior to the commission of the crime charged, was a Coeur d'Alene Indian, but had been declared and adjudicated competent to transact his own business, had been duly emancipated and had received from the United States a patent in fee to certain lands situated upon the Coeur d'Alene Indian Reservation, and that the injuries received by the deceased, and from which she died, were sustained upon said lands and premises, after the defendant had been so emancipated, and received said patent, and that the deceased died upon other patented lands and not upon the Coeur d'Alene Indian Reservation, and that the trial court, for the above

reasons, did not have jurisdiction of the subject of the action, or of the person of the defendant.

EUGENE SOL LOUIE,

Defendant.

By McFARLAND & McFARLAND,

Attorneys for Defendant.

and R. E. McFARLAND,

Service of the foregoing Assignment of Errors by receipt of a true and correct copy thereof, at Boise, Idaho, this 16th day of July, 1919, is hereby admitted.

J. L. McCLEAR,

U. S. District Attorney,

Attorney for Plaintiff.

Endorsed: Filed July 16, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

ORDER ALLOWING WRIT OF ERROR
ON APPEAL.

On this 2nd day of August, A. D. 1919, comes Eugene Sol Louie, above named, by his attorneys, McFarland & McFarland and R. E. McFarland, and files herein and presents to the court, a petition for the allowance of a writ of error on appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and assignment of errors intended to be urged by said defendant, Eugene Sol Louie, in said court, praying also that a transcript

of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such order and further proceedings may be had as may be proper in the premises.

In consideration whereof the court does now here allow the writ of error as prayed.

Done in open court this 2nd day of August, A. D. 1919, by the court.

FRANK S. DIETRICH,
*U. S. District Judge in and for the District
of Idaho.*

Endorsed: Filed Aug. 2, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

WRIT OF ERROR.

UNITED STATES OF AMERICA—ss.

The President of the United States to the Honorable Judges of the District Court of the United States for the District of Idaho, Northern Division, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a cause which is in the said District Court before you, or some of you, between the United States, plaintiff, and Eugene Sol Louie, defendant, manifest error has happened to the great damage of the said Eugene Sol Louie, defendant, as by his complaint appears, we being

willing that error, if any, should be duly corrected and full, speedy justice done to the party aforesaid in this behalf, do command if judgment be given therein, that then under your seal distinctly and openly you send the record and proceedings aforesaid with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit. together with this writ so that you may have the same at San Francisco, in said circuit, on the 1st day of September, A. D. 1919, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct the errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States this 2nd day of August, in the year of our Lord Nineteen hundred and nineteen, and of the Independence of the United States, One hundred and forty-two.

FRANK S. DIETRICH,

U. S. District Judge, District of Idaho.

Attest:

W. D. McREYNOLDS,

(Seal)

*Clerk U. S. District Court,
District of Idaho.*

Endorsed: Filed Aug. 21, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

CITATION.

The President of the United States to the above named plaintiff, and to J. L. McClear, United States District Attorney, attorney for plaintiff:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, in said Circuit, on the 1st day of September A. D. 1919, pursuant to a writ or error filed in the Clerk's office of the District Court of the United States for the District of Idaho, Northern Division, wherein Eugene Sol Louie is plaintiff in error, and you are attorney for the defendant in error, to show cause if any there be, why judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to parties in that behalf.

WITNESS the Honorable Frank S. Dietrich, Judge of the District Court of the United States, for the District of Idaho, this 2nd day of August, A. D. 1919, and of the Independence of the United States One Hundred Forty-two.

FRANK S. DIETRICH,

District Judge.

Attest:

W. D. McREYNOLDS, Clerk.

(Seal)

ACCEPTANCE OF SERVICE OF CITATION.

I hereby, this 2nd day of August, A. D. 1919, accept due personal service of the foregoing Citation,

on behalf of the United States of America, defendant in error.

J. L. McCLEAR,
*United States District Attorney,
Attorney for the United States.*

Endorsed: Filed Aug. 2, 1919.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

PRÆCIPE FOR RECORD.

To W. D. McReynolds, Clerk of the above entitled court:

You are hereby respectfully required to transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, a printed transcript of the following papers constituting the record in this action on appeal, viz., indictment, plea of not guilty to indictment, verdict of the jury, defendant's bill of exceptions, motion in arrest of judgment, judgment, objection to introduction of further testimony, and motion to dismiss case, made during progress of trial, and all appeal papers, with the original Citation and Writ of Error.

McFARLAND & McFARLAND,
and R. E. McFARLAND,
Attorneys for Defendant.

P. O. Address: Coeur d'Alene, Idaho.

Endorsed: Filed July 21, 1919.

W. D. McREYNOLDS, Clerk.

RETURN TO WRIT OF ERROR.

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit and the same is transmitted accordingly.

W. D. McREYNOLDS,

(Seal)

Clerk.

(Title of Court and Cause.)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 40, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as Requested by the praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$48.35, and that the same has been paid by the Plaintiff in Error.

Witness my hand and the seal of said court this 9th day of August, 1918.

W. D. McREYNOLDS,

(Seal)

Clerk.